SUPREME COURT, U. S.

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In the

Supreme Court of the United States

OCTOBER TERM, 1967

No. 56

INTERSTATE CIRCUIT, INC.,

Appellant,

v.

CITY OF DALLAS,

Appellee.

On Appeal From the Court of Civil Appeals
For the Fifth Supreme Judicial District of Texas
Sitting at Dallas

BRIEF OF APPELLANT INTERSTATE CIRCUIT, INC.

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OPINION BELOW

The opinion of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas, sitting at Dallas (R. 161-172) is reported in 402 S.W. 2d 770. A concurring opinion (R. 172-177) by Judge Bateman is reported at 402 S.W. 2d 777. There is no opinion by the 44th District Court of Dallas County, Texas, which tried the case. The judgment of that court appears at R. 155-156.

JURISDICTION

The jurisdiction of the Supreme Court in invoked pursuant to 28 U.S.C. §1257-(2).

This suit was brought by the City of Dallas, seeking a temporary injunction to affirm the decision of the Dallas Motion Picture Classification Board, which had classified the motion picture, *Viva Maria*, as "not suitable for young persons".

The judgment of the 44th District Court of Dallas County, Texas, affirming the decision of the Board, was entered on February 18, 1966. R. 155-156. The judgment entered that day included a Notice of Appeal by Interstate, and within the time prescribed by law, the case was brought before the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas, sitting at Dallas. On April 5, 1966, that court affirmed the judgment of the district court. There was an opinion by that court, (R. 161-172) and a concurring opinion (R. 172-177).

Following the judgment of the Court of Civil Appeals, (R. 178) Interstate filed its Motion for Rehearing which was overruled on April 25, 1966. A Petition for Writ of Error was filed in the Supreme Court of Texas. This was overruled with the endorsement "Writ Refused, No Reversible Error" on July 27, 1966. R. 182. A Motion for Rehearing and a Supplemental Motion for Rehearing were filed in that court. On October 19, 1966, the Motions for Rehearing were overruled by the Supreme Court of Texas (R. 188), making the judgment of the Court of Civil Ap-

peals final. The sequence of filing of these various motions is all shown in a Chronology Table found in Appendix A of this brief.

The Notice of Appeal to the Supreme Court of the United States was filed on January 11, 1967. R. 189. The Record and Jurisdictional Statement were filed with this Court on March 3, 1967, and probable jurisdiction was noted on May 15, 1967.

QUESTIONS PRESENTED

1. Whether Dallas City Ordinance 11284 is unconstitutional because it does not guarantee a prompt, final judicial decision to review actions of the Dallas Motion Picture Classification Board in classifying a motion picture as "not suitable for young persons"?

2. Whether Dallas City Ordinance 11284 is unconstitutional because it prohibits the free exhibition of motion pictures on standards that are vague and ambiguous instead of limiting the restraint on free exhibition to those pictures which are obscene as that term has been defined by this Court?

3. Whether the Dallas Motion Picture Classification Board and the lower courts each applied unconstitutional standards in classifying the motion picture, *Viva Maria*, as "not suitable for young persons"? As sub-parts of this question, it should be determined, (a) whether the members of the Dallas Motion Picture Classification Board used the term "sacrilegious" as a basis for determining that the picture was "not suitable for young persons"; (b) whether the

members of the Classification Board used the geographic area of the City of Dallas in determining the community standard; and (c) whether the members of the Classification Board and the lower courts based their conclusion that the picture was not suitable upon a few isolated scenes rather than considering the dominant theme of the picture as a whole.

STATUTES INVOLVED

The First and Fourteenth Amendments to the Constitution of the United States, Article I, Section 8 of the Texas Constitution, Article 527 of the Texas Penal Code, and Dallas City Ordinance 11284 are involved in this case. These are set forth in Appendix B to this brief.

STATEMENT

This suit involved a motion picture, *Viva Maria*, (the picture was viewed by the trial court, R. 155, and by the Court of Civil Appeals, R. 170) and the classification of this picture "as not suitable for young persons" by the City of Dallas under the provisions of Ordinance 11284. R. 137-140 and R. 1-3.

This classification resulted in partial censorship of the motion picture here in question because it could not be shown to persons under sixteen years of age except when they were accompanied by their parents, guardian or spouse.

The parties to this appeal are Interstate Circuit, Inc., a corporation engaged in the exhibition of commercial motion pictures in Dallas and other Texas cities, and United Artists

Corporation, Intervenor, a corporation engaged in the distribution of commercial motion pictures in Dallas and other Texas cities, as Appellants, and the City of Dallas as the Appellee.[1]

Ordinance 11284 was passed on November 22, 1965. R. 133. The ordinance created the Dallas Motion Picture Classification Board and gives to the Board certain standards for determining whether a motion picture is suitable or not suitable for young persons. R. 121-122. A young person is defined as any person who has not attained his sixteenth birthday. R. 121.

In deference to the standards set forth in *Freedman v. State of Maryland*, 380 U.S. 51 (1965), there is included in the ordinance a section entitled "Judicial Review". R. 128-132. If the exhibitor does not accept the "not suitable for young persons" classification, the ordinance requires the City to file suit to enjoin the showing of the picture unless advertised as so classified. Should the exhibitor appeal from an adverse decision of the trial court, the ordinance requires the City to file responsive pleadings within periods of time less than allowed by the Texas Rules of Civil Procedure and to join with the exhibitor in motions asking trial and appellate courts in Texas to advance the case. R. 128-132.

The present case arises under the ordinance. There is a chronology table included in Appendix A showing the dates that the relevant events transpired. This chart reflects that

[1] United Artists, Inc. perfected a separate appeal to this Court styled *United Artists Corporation, Appellant vs. City of Dallas, Appellee*, being No. 64 on the docket of this Court in the October Term for 1967.

prior to February 14, Interstate applied for a license to exhibit *Viva Maria* for a general audience, and that after a hearing, the picture was classified as "not suitable for young persons". A notice of non-acceptance was filed by Interstate, and on February 14, the present suit was brought by the City of Dallas. R. 1.

In response to the City's petition, Interstate filed an Answer and Cross-Action (R. 16), raising the constitutional questions that (1) the ordinance establishes a system of prior restraint and censorship of communication (R. 19), (2) the terms for classifying motion pictures provided in the ordinance are vague and indefinite, and not limited to obscenity (R. 20), and (3) the ordinance does not provide for a prompt, final judicial determination as to the validity of the classification. R. 20-21. In further answer, Interstate pleaded that commercial motion pictures are protected by Article 527 of the Texas Penal Code. R. 22-23. As Cross-Plaintiff, Interstate, raising the same points, sought a judgment to declare the ordinance invalid and injunctive relief against the enforcement of it. R. 25-27.

At the conclusion of the trial, the Court entered a temporary injunction against Interstate, prohibiting the showing of the motion picture, *Viva Maria*, without the notation that it is "not suitable for young persons". Following a Motion to Advance (R. 157) in which the City joined, the Court of Civil Appeals set the case for hearing on March 28 (R. 160) and on that day, the court viewed the picture and heard oral argument. Chronology Table, Appendix A. The judgment of that court affirming the temporary in-

junction (R. 178) together with written opinion (R. 161) and concurring opinion (R. 172) was rendered on April 5. R. 178, 161 and 172. A Motion for Rehearing by Interstate reurged the identical points of the first brief. This motion was overruled on April 25. Chronology Table, Appendix A.

SUMMARY OF ARGUMENT

Two weeks before the present ordinance was passed, the United States District Court in Dallas declared a prior city ordinance classifying motion pictures to be unconstitutional. *Interstate Circuit, Inc. v. City of Dallas*, 247 F. Supp. 906 (N.D Tex. 1965). In that decision, a finding was made that there was no provision in the Texas statutes for a prompt judicial review in the trial and appellate courts, and experience was that the risk of delay is built into the Texas procedure. The City of Dallas sought to provide a system of judicial review in the present ordinance by promising its cooperation in joining for motions to advance cases on the trial and appellate docket and waiving the time it would ordinarily be allowed for responsive pleadings.

Viva Maria was the first motion picture classified as "not suitable for young persons" under Dallas Ordinance 11284. Following a notice from Interstate that it did not accept this classification of the picture it intended to exhibit, suit was brought by the City on February 14, 1966. It was not until October 19, of that same year, that the Texas Supreme Court denied a Motion for Rehearing on an application for Writ of Error. On that date the judgment of the Court of Civil Appeals confirming the City's action became final. It is the contention of Interstate that the ordinance does not

provide a prompt, final judicial review as required by *Freedman v. State of Maryland*, 380 U.S. 51 (1965).

The present case on *Viva Maria* gave the ordinance a fair test. Both the City and the two appellants gave full cooperation. The system simply did not work.

The ordinance here, like its predecessor, does not profess to censor for obscenity either for an adult audience or for young persons. The present ordinance defines "young persons" as those who have not reached a sixteenth birthday. The prior ordinance defined the same term as those who have not reached an eighteenth birthday. "Not suitable for young persons" is defined as portraying brutality, depravity, sexual promiscuity, nudity, etc., in such a manner as to incite crime on the part of, or arouse the prurient interest of, young persons. In a concluding section, the members of the censor board are instructed to weigh the "harmful effects" of the picture against the artistic or educational value which the film may have.

The opinion declaring the first ordinance unconstitutional turned upon the lack of a prompt judicial review. It gave approval to the definition of "not suitable for young persons" if that term, as to films in question, were interpreted to mean "only those, which to an audience of young persons, as defined in the Ordinance, are obscene when presented in a salacious manner." *Interstate Circuit, Inc. v. City of Dallas*, 247 F. Supp. 906, 910 (N.D. Tex. 1965). The same definition of "not suitable for young persons" was incorporated in the second ordinance, and was given approval by the same court in a second suit for an injunction against its en-

forcement. An appeal was taken to the United States Court of Appeals for the Fifth Circuit and from that decision a Petition for Certiorari is pending before the Court in a proceeding styled *Interstate Circuit, Inc. et al. v. City of Dallas*, Cause No. 42. The terminology, "obscene when viewed by an audience of young persons", originated in the opinion of the United State District Court, *Interstate Circuit, Inc. v. City of Dallas*, 249 F. Supp. 19, 24 (N.D. Tex. 1965), and was used as a second ground for sustaining the ordinance by the Texas Court of Civil Appeals in its opinion in the present case. That was done only, however, after the ordinance definition of "not suitable for young persons" had been approved. R. 170.

The definition of obscenity found in *Roth v. United States*, 354 U.S. 476 (1957) has been construed by recent decisions so that the "average person" would include the meaning of the "average person that is its intended and probable recipient group", or words of similar import. This is allowed if the material is directed to a clearly defined deviant sexual group.

Interstate contends that children are not a clearly defined deviant sexual group as that term is ordinarily used. Further, the ambiguous terms used in the definition of "not suitable for young persons" are too vague for lawful censorship. In addition to this, the Court should not give approval to an ambiguous new standard by allowing a censorship proceeding to be directed against "young persons". This term has only the meaning which is given to it by the party

using the phrase, whether it be a legislature, a city council, or a court.

To approve a new definition of "obscenity" which provides "a film that is obscene when viewed by an audience of young persons is one which, to the average young person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interests, substantially goes beyond the customary limits of candor in description or representation of such matters to the average young persons, and is utterly without redeeming social importance", *Interstate Circuit, Inc. v. City of Dallas*, 249 F. Supp. 19, 24 (N.D. Tex. 1965), is to argue in a circle. Similar definitions could be made to describe material obscene for persons in categories based upon age, rank, sex, situation, or condition of life. It is neither feasible nor practical to have these various mutations of obscenity engrafted as a constitutional doctrine.

The Clasification Board and the Texas courts used standards other than "obscenity" in determining that *Viva Maria*, an innocuous comedy, was not suitable for young persons. One member of the board admitted that the term "sacrilegious" was considered in its classification. Another admitted that he had no experience in judging contemporary community standards outside of the City of Dallas. The trial judge said that he based his decision on a few isolated scenes in the picture. The Court of Civil Appeals found that it had "a minimum of social value." The Supreme Court of Texas did not view the picture.

ARGUMENT

I.

Ordinance 1284 Does Not Assure a Prompt Final Judicial Decision to Review the Acts of the Dallas Motion Picture Classification Board

Freedman v. State of Maryland, 380 U.S. 51 (1965) recognized that motion pictures have been protected by the First Amendment since the decision in *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952). But, it indicated that a system of prior restraint, where a censor board could deny a license to exhibit a motion picture, might be approved if the exhibitor were given the protection of a prompt, final judicial review of the board's action. As the Court states in *Freedman*, on pages 58-59:

> "To this end, the exhibitor must be assured, by statute or authoritative judicial construction, that the censor will, within a specified brief period, either issue a license or go to court to restrain showing the film. Any restraint imposed in advance of a final judicial determination on the merits must similarly be limited to preservation of the status quo for the shortest fixed period compatible with sound judicial resolution. Moreover, we are well aware that, even after expiration of a temporary restraint, an administrative refusal to license, signifying the censor's view that the film is unprotected, may have a discouraging effect on the exhibitor. See Bantam Books, Inc. v. Sullivan, supra. Therefore, the procedure must also assure a prompt final judicial decision, to minimize the deterrent effect of an interim and possibly erroneous denial of a license."

Ordinance 11284 does not give the protection required by the *Freedman* case. The present case was filed on February 14, 1966, (R. 1) in the Texas District Court, but it was not

until 247 days later, on October 19, 1966, (R. 188) that the Texas Supreme Court denied a Motion for Rehearing on a Petition for Writ of Error. This action made the decision of the Court of Civil Appeals (R. 161) final.

It is important to remember that Ordinance 11284 was the second censorship ordinance passed by the City of Dallas in 1965. The first ordinance passed was No. 10963, which was passed on April 5. It was declared unconstitutional in *Interstate Circuit, Inc. v. City of Dallas*, 247 F. Supp. 906 (N.D. Tex. 1965).[2]

No appeal was taken from that decision which made the following Finding of Fact, on page 909:

> "VIII.
>
> The statutes of Texas and the Texas Rules of Civil Procedure, when applied to the Ordinance before the Court, do not provide for a speedy judicial review of the rights of the Plaintiffs sufficient to satisfy the requirements of the case of Freedman v. State of Maryland, 380 U.S. 51, 85 S. Ct. 734, 13 L. Ed. 2d 649 (1965)."

and which expressed the following Conclusion of Law, on page 911:

> "XIII.
>
> Regardless of whether the injunction provided for in Section 46A-7 of the Ordinance involved herein is interpreted as temporary or permanent, there being no provision in the Texas statutes for prompt judicial review in the trial and appellate courts, and experience being that risk of delay is built into the Texas procedure, the Ordinance in question lacks sufficient procedural safeguards designed to obviate the dangers of a censorship system. Freedman v. State of Maryland,

[2] Ordinance 10963 is quoted in its entirety beginning on page 912 of the opinion. Section 46A-7 of the ordinance on *Judicial Review* is found on page 917.

380 U.S. 51, 85 S. Ct. 734, 13 L. Ed. 2d 649 (1965). Compare Trans-Lux Distributing Corp. v. Maryland State Board of Censors, 213 A. 2d 235 (Md. Sept. 27, 1965)."

Ordinance 11284 was passed on November 22, 1965. R. 119, 133. The Dallas exhibitors again brought suit in the federal court seeking an injunction against the enforcement of this second ordinance. From adverse decisions in the lower courts, plaintiffs are now seeking a Writ of Certiorari in *Interstate Circuit, Inc., et al. v. City of Dallas*, No. 42, October Term, 1967. It is necessary to trace that litigation briefly. On December 23, 1965, the United States District Court denied the plaintiffs an injunction against the enforcement of Ordinance 11284 in *Interstate Circuit, Inc. v. City of Dallas*, 249 F. Supp. 19 (N.D. Tex. 1965). Findings of Fact VII through X of that opinion[3] are the basis for hold-

[3] Page 23. They are:

"VII.

Section 46, A-7 entitled 'Judicial Review', in case of non-acceptance of the Board's classification, requires the Board to take steps to obtain a judicial review of the Order of the Board, provides a timetable for Court action by the Board, and requires the Board to waive notice of certain court proceedings.

"VIII.

District Courts in Dallas County, Texas have made it a practice to give preferential settings to cases in which the City of Dallas is a party, particularly those involving the public welfare.

"IX.

The Appellate Courts of Texas have likewise made it a practice to advance cases involving the public welfare and the need for immediate action.

"X.

In cases where the exhibitor-defendant loses before the Board, in the District Court, and in the Court of Civil Appeals, under the timetable provided by the Ordinance in question and under the customary procedure in the Texas Courts, a final decision in the Supreme Court of Texas could be obtained in less than thirty-five days."

ing that the ordinance satisfied the requirements of a prompt, final judicial review.

While that case was being appealed to the United States Court of Appeals for the Fifth Circuit, the present suit involving *Viva Maria* was filed on February 14, 1966. Reference to Appendix A shows the sequence of the proceeding in this case. The case before the Fifth Circuit was decided August 30, 1966. *Interstate Circuit, Inc. v. City of Dallas*, 366 F. 2d 590. In that decision, affirming the denial of an injunction, the Court referred to the finding in the District Court that a final judgment in the Texas courts could be obtained in thirty-five days. This opinion mentioned the action of the Texas Supreme Court in denying a Writ of Error. (p. 601, footnote 22). The writ was refused on July 27. R. 182. On that date the *Viva Maria* case had been in the Texas courts one hundred sixty-three days, but this fact was ignored.

Interstate understands that the assurance of judicial review required by *Freedman* must be furnished by statute or authoritative judicial construction.

The City's system for judicial review which it seeks to sustain here was given a fair test by the parties in this case. The City cooperated by filing pleadings promptly. Equally true, there is no contention in the record that either Interstate or United Artists caused delay. The system does not provide for a prompt judicial review that gives a final determination by the Supreme Court of Texas in thirty-five days; to the contrary, more than eight months had elapsed between the time the *Viva Maria* suit was filed and October 19, the date that a final judicial determination was obtained.

Whether right or wrong, the decision by the Texas Supreme Court was so long delayed that the most propitious opportunity for the exhibition of the picture was long passed.

The *Freedman* opinion pointed to *Kingsley Books, Inc. v. Brown*, 354 U.S. 436 (1956), which required a hearing within one day and provided for an opinion within two days thereafter. After *Freedman*, Maryland took steps to provide for a system of prompt judicial review. This procedure was upheld in *Trans-Lux Distributing Corp. v. Maryland State Board of Censors*, 240 Md. 98, 213 A. 2d 235 (1965).

Neither *Kingsley Books v. Brown* nor *Trans-Lux v. Maryland State Board of Censors* required thirty-five days for a judicial determination of the censor's actions.

Dallas does not have the power to cure the defect in this ordinance. Both the first and the second ordinances sought to provide a system of judicial review to satisfy the requirements of *Freedman*. Lacking the power of a state legislature to pass a statute, and the power of an appellate court of Texas to make an authoritative judicial construction, the City promised its best efforts and cooperation to the local exhibitors in order for it to have a censor board to classify motion pictures as "not suitable for young persons". This was not enough to get a prompt, final judicial decision.

As the Court stated in *Freedman:*

> "Although the Court has said that motion pictures are not 'necessarily subject to the precise rules governing any other particular method of expression', Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 502, 72 S. Ct. 777, 781, 96 L. Ed. 1098, it is as true here as of other forms of expression that '[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.'

> Bantam Books, Inc. v. Sullivan, supra, 372 U.S. 70, 83 S. Ct. 639. '* * * [U]nder the Fourteenth Amendment a state is not free to adopt whatever procedure it pleases for dealing with obscenity * * * without regard to the possible consequences for constitutionally protected speech.' Marcus v. Search Warrant, 367 U.S. 717, 731, 81 S. Ct. 1708, 1716, 6 L. Ed. 2d 1127." 380 U.S. 51, 57.

This quotation summarizes the policy of the Court developed in many cases. *Freedman* does not forbid censorship of motion pictures, but indicates that it will be tolerated if strong safeguards are assured. It is the City's burden to show (1) that Ordinance 11284 assures a prompt, final judicial decision from the Texas courts, and (2) that a two hundred forty-seven day proceeding is a prompt judicial decision.

There are various provisions found in Texas law for advancing cases and giving statutory preferences.[4]

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[4] Article 1738a Tex. Rev. Civ. Stat. provides:

> "From and after January 1, 1944, appeals may be taken direct to the Supreme Court of this State from any order of any trial court granting or denying an interlocutory or permanent injunction on the ground of the constitutionality or unconstitutionality of any statute of this State, or on the ground of the validity or invalidity of any administrative order issued by any State Board or Commission under any statute of this State. It shall be the duty of the Supreme Court of this State to prescribe the necessary rules to be followed in perfecting such appeal."

But, *McGraw v. Teichman*, 147 T. 142, 214 S.W. 2d 282 (1948) held that this statute did not give the Texas Supreme Court jurisdiction from a city's zoning board.

In connection with this statute, see Rule 499-a Tex. Rul. Civ. Proc.

By trying this case as a proceeding for a temporary injunction, certain preferential rules of procedure became applicable. Tex. Rul. Civ. Proc. 385 provides for filing the record in a shorter period of time than ordinary and that there should be no motion for new trial and that the trial judge need not file findings of fact or conclusions of law. Further, this would be an interlocutory matter to which the Court of Civil Appeals is required to give preferential treatment after four preceding classes of litigation. Tex. Rul. Civ. Proc. 410.

The Texas Legislature was in session when the *Freedman* opinion was announced in 1965. The session did nothing to establish a system of prompt judicial review for censorship cases as Maryland has done.

The 60th Legislature convened in regular session in January, 1967. It also did nothing about a system of judicial review for censorship cases. However, it did give a top priority and precedence to litigation arising under the Managing General Agents Licensing Act. [5]

If *Freedman* is correctly understood to require that any system of prior restraint, such as has been established by

[5] 60th Legislature, Chapter 757,5 Vernon's Texas Session Law Service 2048, 2051, §14 of that Act provides

> "Sec. 14. Judicial Review of Acts of Commissioner and the Board. If the commissioner shall refuse an application for license as provided in this Act, or shall suspend, revoke or refuse to renew any license at a hearing as hereinabove provided, and such action is upheld upon review to the board as in this Code provided, and if the applicant or accused thereafter be dissatisfied with the action of the commissioner and the board he may appeal from such action by filing suit against the commissioner and the board as defendants in any of the district courts of Travis County, Texas, or in any district court in the county of applicant's residence, and not elsewhere, within 20 days from the date of the order and action of the said board.
>
> "*Said action shall have precedence over all other causes of a different nature on the docket.* Upon the filing and perfection of such appeal, orders of the commissioner and the board shall be suspended and held for naught until a final court order or decree affirming such action. This appeal shall not be limited to questions of law and shall be tried and determined upon trial de novo to the same extent as now provided in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and *said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending.* The commissioner and the board shall not be required to give any appeal bond in any cause arising hereunder." (Emphasis added)

Ordinance 11284, must assure by statute or authoritative judicial construction that the censor will bring suit and that the case will be prosecuted to assure a prompt, final judicial decision, then it clearly appears that the State of Texas does not have such a system. It is to be noted that the Supreme Court of Texas had this case under consideration for approximately four and one half months. On June 6, 1966, the joint Motion to Advance was filed. R. 180. Apparently, this motion received no consideration because it was on July 27, 1966, that the application for Writ of Error was denied, "Refused, No Reversible Error." R. 182.

This notation is provided for in Tex. Rul. Civ. Proc. 483. It is to be used in cases where the Supreme Court of Texas is not satisfied that the opinion of the Court of Civil Appeals has in all respects correctly declared the law, but is of the opinion that the application presents no error which requires reversal. According to the record of the *Viva Maria* case in the Texas Supreme Court, the opinion and the concurring opinion of the Court of Civil Appeals (R. 161) did not correctly declare the law, but the Supreme Court of Texas was of the opinion that no error was presented which required reversal.

At a time fixed by the court, Interstate and United Artists produced a print of *Viva Maria* and exhibited it in the courtroom of the Court of Civil Appeals. The opinion of that court reflects that this was done. R. 160, 170. It was part of the evidence in the case, and the Clerk of this Court requested a print of the picture for exhibition. It was furnished, and this Court also expects to see *Viva Maria*.

None of the parties of this litigation were ever called upon to show the picture to the Supreme Court of Texas, and that court denied a Writ of Error without taking the trouble to examine this most important piece of evidence which was in the record.

In *Jacobellis v. State of Ohio*, 378 U.S. 184, 188 (1964), the Court laid to rest all arguments relating to the right and duty of an appellate court to give final consideration to the decision of a jury or a lower court. The Court there states, on pages 187-188;

> "Such an abnegation of judicial supervision in this field would be inconsistent with our duty to uphold the constitutional guarantees. Since it is only 'obscenity' that is excluded from the constitutional protection, the question whether a particular work is obscene necessarily implicates an issue of constitutional law. See Roth v. U.S., supra, 354 U.S. 497-498, 77 S. Ct. 1315-1316 (Separate opinion). Such an issue, we think, must ultimately be decided by this Court. Our duty admits of no 'substitute for facing up to the tough individual problems of constitutional judgment involved in every obscenity case.' * * *"

The Texas Supreme Court has had two cases presented to it involving the question of censorship since *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952), was decided in 1952. The first case was *Janus Films, Inc. v. City of Fort Worth*, 354 S.W. 2d 597 (Tex Civ. App. 1962). The opinion by the Court of Civil Appeals was the subject of the memorandum opinion by the Texas Supreme Court denying a Writ of Error, "Writ Refused, No Reversible Error", which is reported in 358 S.W. 2d 589. At the time of this decision in 1962, *Jacobellis* had not given the unequivocal mandate quoted above.

However, when the *Viva Maria* case was presented to that court in 1966, it could not perform its duty of applying the Constitution of the United States without seeing the picture. In fairness to the importance of the rights protected by the First Amendment which were involved in that case, that court should not have left them in limbo by an endorsement, "Writ Refused, No Reversible Error.".

Applying *Freedman* to the Texas judicial system, Interstate believes it is absolutely necessary that the Texas Supreme Court see the picture in dispute in order to provide for a prompt, final judicial determination that the action of the censor is correct. That court must face its judicial duty to uphold constitutional guarantees.

Since Ordinance 11284 could only secure the rights of Interstate and others by the City's promise of "best efforts", it appears that this is not enough. Lacking the power to provide for a system of prompt judicial review, the City of Dallas could only give a system of review that required two hundred forty-seven days for a final decision.

This case is a perfect demonstration of the importance of the requirements of the *Freedman* case, as set out on page 59:

> "Therefore, the procedure must also assure a prompt final judicial decision to minimize the deterent effect of an interim and possibly erroneous denial of a license."

Neither Texas statutes nor decisions of its appellate courts assures a prompt, final judicial decision. Judge

Hughes' opinion on the first ordinance is still correct.[6] There is no provision in the Texas statutes for prompt judicial review in the trial and appellate courts, and experience shows that the risk of delay is built into the Texas procedure. The Texas judicial system does not assure procedural safeguards that satisfy the requirements of *Freedman.*

II.

Ordinance 11284 Prohibits the Exhibition of Motion Pictures on Standards that are Vague and Ambiguous.

Ordinance 11284 has the following relevant provisions:

"Section 46A-1. Definition of Terms:

* * *

"(d) 'Young person' means any person who has not attained his sixteenth birthday.

* * *

"(f) 'Not suitable for young persons' means:

(1) Describing or portraying brutality, criminal violence or depravity in such a manner as to be, in the judgment of the Board, likely to incite or encourage crime or delinquency on the part of young persons; or

(2) describing or portraying nudity beyond the customary limits of candor in the community, or sexual promiscuity or extra-marital or abnormal sexual relations in such a manner as to be, in the judgment of the Board, likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interests.

"A film shall be considered 'likely to incite or encourage' crime delinquency or sexual promiscuity on the part of young persons, if, in the judgment of the Board, there is the substantial probability that it will

[6] *Interstate Circuit, Inc. v. City of Dallas* 247 F. Supp. 906, 911 (N.D. Tex. 1965). Conclusion of Law No. XIII.

create the impression on young persons that such conduct is profitable, desirable, acceptable, respectable, praiseworthy or commonly accepted. A film shall be considered as appealing to 'prurient interest" of young persons, if in the judgment of the Board, its calculated or dominant effect on young persons is substantially to arouse sexual desire. In determining whether a film is 'not suitable for young persons', the Board shall consider the film as a whole, rather than isolated portions, and shall determine whether its harmful effects outweigh artistic or educational values such film may have for young persons."

This provision for classification by the Dallas Board does not contain the word "obscene". Ordinance 10963 contained the identical language with the identical numbers, with the exception that "young persons" was defined as being anyone who had not attained his eighteenth birthday. *Interstate Circuit, Inc. v. City of Dallas*, 247 F. Supp. 906, 913 (N.D. Tex. 1965). Although this ordinance was declared unconstitutional because it did not provide for a system of judicial review, Conclusions of Law IX and X introduced the new term "when viewed by an audience of young persons".[7]

[7] Conclusions of Law IX and X on Page 910 read as follows:
"IX. The States' authority over chidren's activities is broader than over like activities of adults, and the fact that certain films are not obscene under the Supreme Court definition in Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L. Ed. 2d 1498, and affirmed in Jacobellis v. State of Ohio, 378 U. S. 184, 84 S. Ct. 1676, does not necessarily render them not obscene when viewed by an audience of young persons, as defined in Section 46A-1 of the Ordinance, so as to protect them under the First Amendment to the Federal Constitution. Jacobellis v. State of Ohio, 378 U. S. at 195, 84 S. Ct. 1676; Prince v. Commonwealth of Massachusetts, 321 U. S. 158, 168, 64 S. Ct. 438, 88 L. Ed. 645 (1944); State v. Settle, supra; In re Louisiana News Co. v. Dayries, supra.
(Continued on next page)

The City did not change the definition "not suitable for young persons" when it passed Ordinance 11284. In the second opinion the ordinance was sustained by a similar construction and use of the term "obscene when viewed by an audience of young persons". See *Interstate Circuit, Inc. v. City of Dallas*, 249 F. Supp, 19, 24 (N.D. Tex. 1965). Conclusions of Law IX through XI.

The opinion of the Court of Civil Appeals found no infirmity in the ordinance because the terms were too broad, uncertain, or indefinite.

The opinion of Judge Bateman, in which Judge Dixon concurred, totally supported the ordinance without regard to obscenity tests. It provided:

> "It is my firm opinion that the constitutional guaranties of free speech may not properly be invoked to defeat the worthy purposes of the ordinance in question. The classification of a motion picture as 'not suitable for young persons' is not by the terms of the ordinance made to depend on whether the motion picture is obscene, and I do not believe the United States Supreme

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(Continued from page 22)

See Lockhart & McClure, Censorship of Obscenity: The Developing Constitutional Standards, 45 Minn. L. Rev. 5, 85-88 (1960); Fagan, Obscenity Control and Minors—The Case for a Separate Standard, 10 Catholic Lawyer 270 (1960); Note, "For Adults Only": The Constitutionality of Governmental Film Censorship by Age Classification, 69 Yale L. J. 141 (1959)."

"X. Films which to an audience of young persons are obscene when presented in a salacious manner are not protected by the First Amendment to the Constitution. The itemization of films in the Ordinance involved herein, set out under the definition of 'Not suitable for young persons' contained in Section 46A-1(f) (1) and (2) should be interpreted to include only those, which to an audience of young people as defined in the Ordinance, are obscene when presented in a salacious manner. When so interpreted, such films are not protected by the First Amendment to the Constitution. See citations under IX."

> Court intended, in Near v. State of Minnesota, 283 U.S. 697, 716 or in any other case, to make such a stringent limitation on the powers of a state or a city in this field" R. 174.

This analysis of the opinions construing Section 46A-7(f) leads to the conclusion that the City would not accept the restricted term, "obscene for young persons", which was developed by Judge Hughes, and that the Texas courts sustained the standard of the ordinance rather than using the new concept of "obscene for young persons".

Since the City and the opinion in the present case hold firm to the terms of "not suitable for young persons" set forth in the ordinance, it is proper to consider whether the ordinance itself is a legal standard for censoring motion pictures for any age group.

Various terms or standards have been classified as too vague or indefinite for use in a censorship ordinance. These include "Sacrilegious" *(Joseph Burstyn, Inc. v. Wilson,* 343 U.S. 494 (1952)); "of such character as to be prejudicial to the best interest of the people of said City" *(Gelling v. Texas,* 343 U.S. 960 (1952)); "immoral and harmful" *(Superior Films, Inc. v. Department of Education,* 159 Ohio St. 315, 112 N.E. 2d 311 (1953), reversed, 346 U.S. 587 (1954)); "Obscene, indecent, immoral, inhuman, sacrilegious" or "would tend to corrupt morals" *(Kingley International Pictures Corp. v. Regents,* 360 U.S. 684 (1959)). A recent compilation of these cases and others is found in Krattenmaker's *Exclusion of Children from Violent Movies,* 67 Columbia Law Review 1149, 1166 (1967).

Roth v. United States, 354 U.S. 476 (1957) held that obscenity is not within the area of constitutionally protected speech or press. The famous *Roth* definition of "obscenity", "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests" has been clarified over the years. It was restated in *A Book, Etc. v. Attorney General of Commonwealth of Massachusetts*, 383 U.S. 413, 418 (1966) where it is stated:

> "Under this definition, as elaborated in subsequent cases, three elements must coalesce: It must be established that (a) the dominant theme of the material taken as a whole appeals to prurient interests in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value."

The last sentence of the ordinance section defining "not suitable for young persons" is directly in the teeth of *Jacobellis v. State of Ohio, supra.* The language of the ordinance is:

> "In determining whether a film is 'not suitable for young persons', the Board shall consider the film as a whole, rather than isolated portions, and should determine whether its harmful effects outweigh artistic or educational value such film may have for young persons."

Jacobellis v. State of Ohio, 378 U.S. 184, 191 (1964), stated:

> "It follows that material dealing with sex in a manner that advocates ideas, Kingsley Int'l Pictrues Corp. v. Regents, 360 U. S. 684, 79 S. Ct. 1362, 3 L. Ed. 2d

> 1512, or that has literary or scientific or artistic value or any other form of social importance, may not be branded as obscenity and denied the constitutional protection. Neither may the constitutional status of the material be made to turn on a 'weighing' of its social importance against its prurient appeal, for a work cannot be proscribed unless it is 'utterly' without social importance. * * *"

The rule against "weighing" was reaffirmed in *A Book, Etc. v. Attorney General of Commonwealth of Massachusetts*, 383 U.S. 413, 419 (1966), where the Court, speaking to this subject, said:

> "The Supreme Judicial Court erred in holding that a book need not be 'unqualifiedly worthless before it can be deemed obscene.' A book cannot be proscribed unless it is found to be *utterly* without redeeming social value. This is so even though the book is found to possess the requisite prurient apeal and to be patently offensive. Each of the three federal constitutional criteria is to be applied independently; the social value of the book can neither be weighed against nor cancelled by its prurient appeal or patent offensiveness. Hence, even on the view of the court below that *Memoirs* possessed only a modicum of social value, its judgment must be reversed as being founded on an erroneous interpretation of a federal constitutional standard.'

The opinion by Judge Dixon states:

> "We hold that '*Viva Maria*' has only a minimum of social value, if any at all, as to children under the age of sixteen years. And since it is permitted to be exhibited subject only to limited regulation, it is not constitutionally protected from the terms of the Ordinance which the city seeks to apply or from the terms of the temporary injunction granted by the trial court." R. 171.

It is submitted that both the Board and the Court followed the terms of the ordinance in weighing "harmful effects" against artistic or educational values.[8]

Three sub-questions remain:

(1) Does the First Amendment permit a different standard of censorship for motion pictures shown to children?

(2) Are children a clearly defined deviant sexual group that will be used as a basis for permitting a system of censorship with standards different from that used for an ordinary adult person?

(3) Does the term "young persons" have a sufficiently definite meaning that can be used as the basis for allowing a system of censorship to exist that is different from that which is accorded to material shown to an adult citizen?

Turning to the first of these questions, it must be admitted that prior opinions of this Court indicate that a different standard may be permitted. *Butler v. State of Michigan*, 352 U.S. 380 (1957), presented a case where a conviction was obtained under a general statute which made an offense the dissemination of material that was obscene or otherwise objectionable. The Court was asked to sustain the conviction on the ground that such a law was necessary to protect children. There was a separate statute designed to prohibit the distribution of obscene matters tending to the

[8] Mr. John Gilliland, a member of the Board, was called as a witness, and on cross-examination, admitted that the picture had some artistic value. R. 67. The Reverend James Robert Maceo, a member of the Board was called as a witness, and admitted on cross-examination, that the picture was generally a comedy. R. 91.

corruption of the morals of youth. The conviction was not under that statute. This case was reversed with an appropriate notation that it would reduce the adult population of Michigan to reading only that which is fit for children.

In 1964, that case was cited in *Jacobellis v. State of Ohio*, 378 U.S. 184, 195 (1964), the exact language from the opinion being:

> "We recognize the legitimate and indeed exigent interest of States and localities throughout the Nation in preventing the dissemination of material deemed harmful to children. But that interest does not justify a total suppression of such material, the effect of which would be to 'reduce the adult population * * * to reading only what is fit for children.' Butler v. Michigan, 352 U. S. 380, 383, 77 S. Ct. 524, 526. State and local authorities might well consider whether their objectives in this area woud be better served by laws aimed specifically at preventing distribution of objectionable material to children, rather than at totally prohibiting its dissemination. Since the present conviction is based upon exhibition of the film to the public at large and not upon its exhibition to children, the judgment must be reviewed under the strict standard applicable in determining the scope of the expression that is protected by the Constitution."

It is respectfully pointed out that this language was not necessary for the *Jacobellis* decision, and, therefore, it is a subject which is still open for review.

Also, see *Redrup v. State of New York*, 386 U.S. 767 (1967).

Three cases relating to obscenity were decided in 1966. This trilogy, *Ginzburg v. United States*, 383 U.S. 463, *Mishkin v. State of New York*, 383 U.S. 502, and *A Book, Etc. v. Attorney General of the Commonwealth of Massachusetts*,

383 U.S. 413, gave further explanation of the law on obscenity cases. *Mishkin v. State of New York* sustained the conviction for disseminating literature directed to deviant sexual groups. After rejecting an argument based upon the absolute standard of *Manual Enterprises, Inc. v. Day*, 370 U.S. 478 (1962) the opinion states on page 508:

> "Where the material is designed for and primarily disseminated to a clearly defined deviant sexual group, rather than the public at large, the prurient-appeal requirement of the *Roth* test is satisfied if the dominant theme of the material taken as a whole appeals to the prurient interest in sex of the members of that group. The reference to the 'average' or 'normal' person in *Roth*, 354 U.S. at 489-490, 77 S. Ct., at 1311, does not foreclose this holding. In regard to the prurient-appeal requirement, the concept of the 'average' or 'normal' person was employed in *Roth* to serve the essentially negative purpose of expressing our rejection of that aspect of the *Hicklin* test, Regina v. Hicklin, [1868] L. R. 3 Q. B. 360, that made the impact on the most susceptible person determinative. We adjust the prurient-appeal requirement to social realities by permitting the appeal of this type of material to be assessed in terms of the sexual interests of its intended and probable recipient group; and since our holding requires that the recipient group be defined with more specificity than in terms of sexually immature persons,[8] it also avoids the inadequacy of the most-susceptible-person facet of the *Hicklin* test."
>
> "[8] See generally, 1 American Handbook of Psychiatry, 593-604 (Arieti ed. 1959), for a description of the pertinent types of deviant sexual groups."

On page 593 of Arieti, *Handbook of Psychiatry*, to which reference was made, the major sexual perversions are listed. They are homosexuality, pedophilia, fetishism, transvestitism, exhibitionism, vouyerism, sadomasochism, zoophilia, coprophilia, and necrophilia. These topics are discussed in the text that follows, and in addition, there are headings on

"Lust Murder" and "Group Perversion" in the text discussion which follows. "Children" is not a class listed.

Turning now to our second question, we must answer that children are not a clearly defined deviant sexual group. It is important that this proposition be stated because it avoids a major confusion which results if the language of *Butler* and *Jacobellis* regarding children is allowed to gain support from a doctrine of obscenity which was announced to prohibit a pandering to clearly defined deviant sexual groups.

The third sub-question should be answered in the negative because the term "young persons" does not have a sufficiently definite meaning to permit a system of censorship for material shown to young persons when this same material can be distributed to those who are not young persons.

In the present ordinance, the term "young person" is defined as one who has not attained his sixteenth birthday. R. 121. But, in Ordinance 10963, this same term was defined as one who has not attained his eighteenth birthday. *Interstate Circuit, Inc. v. City of Dallas*, 247 F. Supp. 906, 913 (N.D. Tex. 1965).[9]

[9] The preamble of Ordinance 10963, found on page 912 of the opinion, contains the recitation that the City Council had found there was a serious increase in crime, delinquency, and sexual promiscuity on the part of young persons of school age within the City; that such increase is the result of various factors including the type of commercial entertainment available to such young persons; that among entertainment media, motion picture films possess a greater capacity for good and for evil among young persons of school age than other modes of expression, and are therefore affected with the public interest, and that some of the films currently being shown and accessible to viewing by such young persons though not obscene to such an extent as to justify complete suppression, nevertheless have a tendency to incite or encourage criminal, delinquent and sexual promiscuous behaviour on the part of such young persons, and that an urgent public necessity exists to protect such young persons from the exhibition of such films.

For a comparison of the preamble in the present ordinance which does not recite a "juvenile crime wave", see R. 120.

It would seem that there must be valid reason for reducing the age limit from eighteen, as was found in the unconstitutional Ordinance 10963, to sixteen, as is in the present Ordinance 11284.

Since it is obvious that, considering all persons under eighteen years of age, the more senior part of this group would be more likely to be guilty of crime, delinquency, and sexual promiscuity, there must be some reason why the age limit was dropped. Was it because there was no "crime wave"? Was it because the first ordinance was in error, and children over sixteen, like those over eighteen, were not affected by the material which could be safely shown to an adult audience? Was it because the City was determined to have a classification ordinance to censor something, and having failed on the first by virtue of judicial review, it felt that it would be easier to sustain an ordinance censoring for a younger group, with the provision that pledged the cooperation of the City in trying to get the Texas courts to hear cases?

These unanswered questions may help to demonstrate the difficulty in finding a clear definition of "young persons".[10]

Returning then to the main question under discussion here, it is submitted that the ordinance introduces the term "young

[10] There are two cases where the term "young person" has been given a definition. In the first of these, *In re Stoner*, 74 Ind. App. 327, 128 N.E. 938 (1903), there was a statute which defined young persons as those between fourteen and eighteen years of age. The second case, *Keeney v. McVoy*, 206 Mo. 42, 103 S.W. 946, 954 (1907), quotes a dictionary definition of a child and one of the terms to which it is equated is "one of tender years, a young person, a youth".

person" and gives it a statutory definition as one who has not reached his sixteenth birthday.

If the definition of "young persons" is to rest solely on the caprice of the Dallas City Council, the constitutional privilege of free communication is eroded. For each municipality to have a system of partial censorship based upon its own definition of "young person" invites a return to the confusion that existed when the "contemporary community standard" was defined by each local government. At the moment, Dallas has set the age at under sixteen, but the sattelite cities could set it at sixteen through twenty-one, or older. Of course, if the term has no meaning except that which the city council gives to it, at any meeting it can raise the age to eighteen, twenty-one, or older.

It should not be necessary to re-define obscenity either directly or by implication in order to have different standards for varying age groups. To sunder the term "obscenity" in this fashion is unrealistic, and puts an overwhelming burden on every judicial system which must give a prompt judicial review to the classification of pictures under the different standards of each ordinance.

The terms of 46-A1(f), used to define "not suitable for young persons", are each unconstitutional under cases already decided. Using them to censor material shown to a vague and uncertain class does not give these terms a better standing. The use of "young persons" to define the class subject to censorship only aggravates the problems of uncertainty.

III.

The Dallas Motion Picture Classification Board and the Lower Courts Applied Unconstitutional Standards in Classifying "Viva Maria" as "Not Suitable for Young Persons".

A Conclusion That the Picture Was Sacrilegious Was Used as a Basis for the Classification of "Not Suitable For Young Persons".

Viva Maria would be classed as a simple comedy by anyone who has seen the picture. It was classified as "unsuitable (sic) for young persons" by action of the Classification Board. R. 137-138. These minutes do not reflect any reason for the classification.

Mr. John Gilliland, a member of the Board, was called as a witness. R. 44. After reciting that the minutes did not state the reason for the classification, he proceeded into a colloquy where the following was asked, and the answers given:

> "Q. As a matter of fact, back to your own opinion from viewing that picture, you do not consider it to encourage or incite crime or delinquency on the part of young persons, do you?
>
> "A. Well, I think the ordinance talks about the judgment of the board, if the movie tends to do these things. The board has to rule on this basis. Now, if you are asking me personally,—
>
> "Q. Yes, sir.
>
> "A. —I think, as far as the violence portion goes, when the clergy got tangled up in it really was the only

thing, as far as violence goes. That was not very good as far as I was concerned because it really in a sense okayed violence because the clergy really was the perpetrators of the violence. In that sense I think it falls under that portion. At least that was my opinion.

"Q. Wouldn't it be fair to say that that portion was considered by you to be sacrilegious?

"A. I don't think of it in that sense myself, but I am sure that entered into it." R. 64.

It is noted that the witness developed the concept of impropriety by the clergy in participating in violence, and he further stated that the question of sacrilege entered into the decision of the board. He went on to explain that the picture had a lot of spoofing or poking of fun as a part of the plot.

The Geographic Area of the City of Dallas was used to determine the Contemporary Community Standard.

The Reverend James Robert Maceo, a member of the Classification Board, was called as a witness. R. 74. On cross-examination he was asked the question regarding the term "community". The following colloquy took place:

Q. And what do you mean "our community"?

"A. The City of Dallas.

"Q. And when you and the other board members were discussing *'Viva Maria!'* and speaking in terms of the contemporary standards of the community, you and the board members were speaking of the Dallas community, were you not?

"A. I was, and as far as our discusion goes, it was in terms of the teenagers or young people we know.

"Q. And if I were to ask you what the community was that you were considering in the context of the ordinance, you would say you were considering the Dallas community?

"A. That is my experience.

"Q. And that is the only community you were considering?

"A. Yes." R. 93-94.

This testimony clearly shows that the witness limited his consideration of a contemporary community standard to the City of Dallas.

This violates the general test of obscenity, whether for adults or young people, which was announced first in *Manual Enterprises, Inc. v. Day*, 370 U.S. 478 (1962) and which was reiterated in *Jacobellis v. State of Ohio*, 378 U.S. 184 (1964). It also violated a Texas law on the subject of obscenity, Article 527 of the Penal Code (Appendix B) which defined a contemporary community standard as a geographic area not less than the State of Texas. This amendment, passed in 1961, predated the *Manual Enterprises, Inc. v. Day* rule by one year.

The Trial Judge Used Erroneous Standards in Judging the Picture on a Few Isolated Scenes

At the conclusion of the trial, the court stated:

"Oh, I realize you gentlemen might be right. There are two or three features in this picture that look to me would be unsuitable to young people. Actually, they have tried to track that Friedman (sic) case, looks like, in this ordinance, and if any ordinance can be passed,

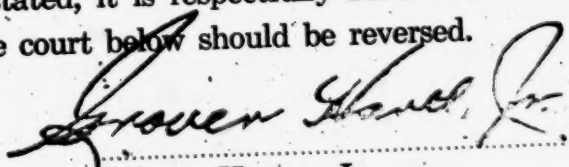
why, it loks like they have taken every ground to pass one if one can be valid, that it, valid. So I enjoin the exhibitors, its agents, servants, attorneys and employees from exhibiting it. * * *" R. 116.

This statement, made spontaneously by the court, shows the basis of the judgment at the trial level. It did not apply the "prurient interest", "patent offensiveness", and "no redeeming social value" tests of obscenity, whether for adults or young persons. As was stated directly, it was two or three features that the court thought would be unsuitable to young persons.

This is an improper test.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed.



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PROOF OF SERVICE

I, Grover Hartt, Jr., one of the attorneys for Interstate Circuit, Inc., Appellant herein, and a member of the Bar of The Supreme Court of the United States, hereby certify that, on the 28th day of September, 1967, I served copies of the foregoing Brief of the Appellant Interstate Circuit, Inc. on the several parties hereto, as follows:

1. On Appellee City of Dallas, by mailing a copy, in a duly addressed envelope, with postage prepaid, to Mr. N. Alex Bickley, City Attorney, 301 Municipal Building, Dallas, attorney of record for the City of Dallas.

2. On Intervenor United Artists Corporation, by mailing a copy, in a duly addressed envelope, with postage prepaid, to Mr. Paul Carrington, 1900 Mercantile Dallas Building, attorney of record for United Artists Corporation.

Grover Hartt, Jr.

GROVER HARTT, JR.

3525 Southland Center,
Dallas, Texas 75201.

APPENDIX A

Chronology Table for Appendix

All dates are 1966

No.	*Date*	*Event*
1.	Jan. 24	Interstate's Application to Classify "Viva Maria" as "suitable for young persons".
2.	Jan. 25	Classification Board voted to screen picture.
3.	Feb. 9	Board classified picture "not suitable for young persons".
4.	Feb. 11	Exhibitor gave notice of non-acceptance.
5.	Feb. 14	City filed Plaintiff's Original Petition.
6.	Feb. 17	Interstate's answer filed.
7.	Feb. 17	Temporary Injunction hearing began.
8.	Feb. 17	"Viva Maria" opened at Esquire Theatre.
9.	Feb. 18	Temporary Injunction entered
10.	Feb. 21	Motion to Send Original Exhibits
11.	Feb. 21	Interstate's Request of Record and Statement of Facts.
12.	Feb. 25	Transcript filed.
13.	Mar. 19	Interstate's brief filed in Court of Civil Appeals.
14.	Mar. 24	City's brief filed.
15.	Mar. 24	Motion to Advance case and to exhibit picture filed.

Chronology Table for Appendix

All dates are 1966

No.	Date	Event
16.	Mar. 24	Motion to Advance granted.
17.	Mar. 24	Order to Show Film
18.	April 5	Judgment of the Court of Civil Appeals
19.	April 5	Opinion of the Court of Civil Appeals
20.	April 6	Interstate's Motion for Rehearing filed
21.	April 7	City's Reply
22.	April 20	United Artists Motion for Rehearing
23.	April 22	City's Reply
24.	April 25	Appellants' Motion for Rehearing Overruled
25.	May 19	Interstate's Petition for Writ of Error
26.	May 23	Stipulations between Interstate, United Artists, and City agreeing that City could mail reply to Petition for Writ of Error by May 31. This was done to relieve a conflict arising by virtue of a companion case between the same parties set before the United States Court of Appeals on May 23.
27.	May 23	Interstate's Application for Writ of Error filed in Supreme Court of Texas
28.	May 31	City's Reply mailed

Chronology Table for Appendix

All dates are 1966

No.	*Date*	*Event*
29.	June 6	Joint Motion to Advance filed.
30.	July 27	Texas Supreme Court refuses Writ of Error, n.r.e.
31.	Aug. 10	Interstate's Motion for Rehearing filed
32.	Aug. 18	City's Reply
33.	Sept. 30	Interstate's Supplemental Motion for Rehearing
34.	Oct. 4	City's Reply
35.	Oct. 19	Texas Supreme Court overruled Motion for Rehearing
36.	Jan. 11, 1967	Notice of Appeal to Supreme Court of United States

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The above Chronology Table has been prepared by appellant Interstate and approved by the City of Dallas, and is tendered here to assist in clarifying the time sequence involved in the proceeding.

APPENDIX B

United States Constitution

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged,